COURT OF APPEALS
DECISION
DATED AND FILED

June 25, 2008

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2007AP2929-CR **Cir. Ct. No. 2006CT391**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

SHELLY L. MASON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Fond du Lac County: DALE L. ENGLISH, Judge. *Affirmed*.

¶1 SNYDER, J.[1] Shelly L. Mason appeals from a judgment of conviction for operating a motor vehicle while under the influence (OWI), third offense, contrary to WIS. STAT. § 346.63(1)(a) (2003-04). Mason contends that

[1] This appeal is decided by one judge pursuant to WIS STAT § 752.31(2)(f) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise indicated.

the circuit court erred when it denied her motion to suppress evidence of the violation, alleging that the officer illegally entered her residence. Specifically, she argues that the officer's entry into her home was not justified under the community caretaker doctrine and, therefore, her Fourth Amendment rights were violated. We disagree and affirm the judgment of the circuit court.

FACTS AND PROCEDURAL BACKGROUND

¶2 On May 6, 2006, Officer Steve Kastenschmidt, on patrol for the Fond du Lac County Sheriff's Department, was dispatched by the 911 center in order to assist an ambulance on its way to what would later be revealed as Mason's residence. Kastenschmidt was also informed that there was an automobile accident on Breakneck Road and that the driver had returned home to that same address.

¶3 Upon arrival at the residence, Kastenschmidt noticed that first responders were already present, but the ambulance had not yet arrived. Kastenschmidt then entered the residence through an open garage door, and observed the first responders evaluating and treating Mason. Kastenschmidt briefly questioned Mason, who revealed that she had consumed five to six drinks that night. Kastenschmidt also noted that Mason's speech was slow and "her eyes were red and glassy." Furthermore, Mason indicated to Kastenschmidt that no one else had been injured at the accident scene, which another officer had responded to.

¶4 Mason was subsequently charged with operating a motor vehicle while under the influence and operating a motor vehicle with a prohibited alcohol concentration, both third offenses. Mason sought to suppress evidence regarding her offenses, alleging illegal entry into her home; nevertheless, her motion was

denied in its entirety following an evidentiary hearing on April 20, 2007. During that evidentiary hearing, the court ruled the community caretaker exception justified Kastenschmidt's entry into Mason's home, because he was performing a bona fide community caretaker activity and the public interest outweighed the intrusion of Mason's privacy.

¶5 On September 17, 2007, Mason entered a no contest plea to the OWI, third offense charge.[2] The court entered a judgment of conviction and sentenced Mason to thirty days in jail, a thirty-two month driver's license revocation, thirty-two months of ignition interlock, $1587 in fines and costs, and an AODA assessment; however, the court stayed the sentence on October 3, pending this appeal.

DISCUSSION

¶6 Mason contends that Kastenschmidt's entry into her home violated her right to be free from unreasonable search and seizure under the Fourth Amendment, and thus any evidence obtained from that entry should be suppressed. Whether the evidence should be suppressed is a question of constitutional fact. *See* ***State v. Samuel***, 2002 WI 34, ¶15, 252 Wis. 2d 26, 643 N.W.2d 423. In reviewing questions of constitutional fact, we will uphold a circuit court's factual findings unless they are clearly erroneous, but we will independently decide whether those facts meet the constitutional standard. ***Id.***

¶7 Mason insists that Kastenschmidt's entry did not fall within any of the recognized exceptions to the Fourth Amendment's warrant requirement.

[2] The operating a motor vehicle with a prohibited alcohol concentration, third offense, violation was dismissed upon the State's motion.

Mason's argument details how the entry did not meet the exigent circumstances doctrine, was not made after obtaining consent, and was not justified under the community caretaker doctrine. We begin by addressing the community caretaker exception because it resolves this appeal. When the resolution of one issue resolves the appeal, we need not address the additional issues presented. ***Barber v. Weber***, 2006 WI App 88, ¶19, 292 Wis. 2d 426, 715 N.W.2d 683.

¶8 The community caretaker function was first described by the United States Supreme Court in ***Cady v. Dombrowski***, 413 U.S. 433, 441 (1973), which stated:

> Local police officers, unlike federal officers, frequently investigate vehicle "accidents" in which there is no claim of criminal liability and engage in what, for want of a better term, may be described as community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.

We have held that police may, in certain circumstances, conduct an entry and seizure within the meaning of the Fourth Amendment, provided that the seizure based on community caretaker function is reasonable. ***State v. Anderson***, 142 Wis. 2d 162, 167, 417 N.W.2d 411 (Ct. App. 1987).

¶9 In ***Anderson***, we developed a three-part test to evaluate the reasonableness of a seizure by police made in the course of their community caretaker function. We held:

> [W]hen a community caretaker function is asserted as justification for the seizure of a person, the trial court must determine: (1) that a seizure within the meaning of the fourth amendment has occurred; (2) if so, whether the police conduct was bona fide community caretaker activity; and (3) if so, whether the public need and interest outweigh the intrusion upon the privacy of the individual.

Id. at 169.

¶10 Regarding the first ***Anderson*** factor, we agree with the circuit court that a Fourth Amendment seizure occurred. Kastenschmidt entered Mason's home with neither consent nor a warrant, and the charges against Mason relied on information obtained from that entry. Neither party disputes the finding of the court on this issue.

¶11 The second ***Anderson*** factor asks us to determine whether Kastenschmidt's entry qualifies as a bona fide community caretaker function, and thus is an exception to the Fourth Amendment's warrant requirement. Mason places much emphasis on her belief that Kastenschmidt's actions were not "completely divorced" from the investigation of a crime. Mason's view is that there is no evidence of the officer assisting her in any way, and the questioning that took place was consistent with a police investigation of a crime.

¶12 We disagree with Mason's contention that Kastenschmidt did not assist her in any way. Kastenschmidt was responding to a 911 call, he was unaware of the extent or scope of the injuries involved, and his initial inquiry was merely to ascertain information about the accident. Police responding to the scene of a 911 distress call are by nature assisting those in distress, and we do not require additional evidence that officers perform specific functions, such as CPR or bandaging a wound, in order to consider them to be assisting other emergency responders. Furthermore, Kastenschmidt's duties include being available to assist first responders or other medical professionals in the event of an emergency, like the one involving Mason. *See* ***Bies v. State***, 76 Wis. 2d 457, 468, 251 N.W.2d 461 (1977) (commenting on the community caretaker function of police as an essential

function of their role in society). Therefore, Kastenschmidt's actions reflect a bona fide community caretaker function under the circumstances.

¶13 We are not persuaded by Mason's argument that Kastenschmidt's questions were made solely to investigate a crime. Although asking about Mason's injuries and whether or not others were involved in the accident is consistent with investigating an accident, Kastenschmidt's criminal inquiry occurred only after Mason's statement that she had consumed alcohol and his observation of Mason's physical appearance that suggested alcohol consumption. We have held that, pursuant to their community caretaker functions, officers need not obtain a warrant in order to continue a noncriminal inquiry that has subsequently turned into a criminal investigation. *See, e.g.*, ***State v. Ziedonis***, 2005 WI App 249, ¶¶2-3, 17, 287 Wis. 2d 831, 707 N.W.2d 565 (holding that police were acting as bona fide community caretakers when they first approached dwelling in response to a loose animal complaint and subsequently found drug paraphernalia and marijuana plants); ***State v. Ferguson***, 2001 WI App 102, ¶13, 244 Wis. 2d 17, 629 N.W.2d 788 (finding that police were engaged in bona fide community caretaker activity when investigating a call about a fight that led to discovery of underage drinkers); ***State v. Dull***, 211 Wis. 2d 652, 659-60, 565 N.W.2d 575 (Ct. App. 1997) (holding that an officer investigating a noise complaint was initially acting as community caretaker, even though officer's role as community caretaker ended when officer determined that juvenile was intoxicated and took him into custody).

¶14 The third ***Anderson*** factor, which evaluates the reasonableness of a seizure made in the course of a community caretaker capacity, balances public interest against the individual's expectation of privacy. This factor contains four additional elements to assist in our analysis:

> (1) the degree of the public interest and the exigency of the situation; (2) the attendant circumstances surrounding the seizure, including time, location, the degree of overt authority and force displayed; (3) whether an automobile is involved; and (4) the availability, feasibility and effectiveness of alternatives to the type of intrusion actually accomplished.

Anderson, 142 Wis. 2d at 169-70 (footnotes omitted). Mason argues that none of these elements were present. We disagree. The degree of public interest in having law enforcement officers conduct a thorough investigation of an automobile accident is high; furthermore, the numerous unknown facts at the time of Kastenschmidt's dispatch constitute sufficient exigent circumstances to justify the officer's entry into Mason's home. The community caretaker function is intended to allow officers "a reasonable scope of action in the discharge of their responsibility for general maintenance of peace and order in the community." ***Beis***, 76 Wis. 2d at 472. Kastenschmidt was unaware of whether the threat of danger had passed; specifically, whether everyone injured in the accident had been accounted for.

¶15 Mason also contends that Kastenschmidt had multiple options for evaluating the scene without entering her home. For example, Mason suggests that Kastenschmidt could have assisted the medical first responders simply by sticking his head in the door and asking if everything was all right. This and other alternatives to Kastenschmidt's entry may have been alternatives, but entering the home to assist the first responders and find out if other injured parties might still be at the accident scene was the most feasible and effective course of action.

¶16 We also question Mason's contention that Kastenschmidt should have known that his investigation could have waited until a warrant could be obtained. The State counters that Kastenschmidt, upon being dispatched,

proceeded to Mason's residence with a sense of urgency, as indicated by his actions of turning on the sirens and arriving at the scene as soon as he possibly could. All Kastenschmidt knew at the time of entry into Mason's home was that there was an accident for which 911 had been called and that the first responders had arrived. He believed his help was needed.

¶17 We have viewed with skepticism whether the subjective knowledge of an officer should be controlling in a community caretaker analysis. In ***State v. Kramer***, 2008 WI App 62, ¶¶35-37, No. 2007AP1834-CR, *review granted* (WI June 18, 2008), we observed that whether a seizure is justified is based on an objective test; therefore, a seizure ought not be deemed reasonable or unreasonable based upon the officer's subjective beliefs. Here, during the initial minutes of his investigation, Kastenschmidt did not know whether another person had been injured, did not know Mason's medical condition, and did not know whether the first responders required his assistance. Although what Kastenschmidt knew at the time he arrived at Mason's residence is significant in assessing the urgency of the situation, Kastenschmidt's entry is an objectively reasonable action pursuant to a 911 distress call, regardless of what his subjective thoughts were.

¶18 Another ***Anderson*** element in the public interest analysis requires that we consider whether an automobile was involved, because "[i]n some situations a citizen has a lesser expectation of privacy in an automobile." ***Anderson***, 142 Wis. 2d at 169 n.4. Even though the 911 call was made pursuant to an automobile accident, the seizure occurred entirely within the home of Mason. Thus, this factor weighs in Mason's favor, because an individual has a heightened expectation of privacy in the home.

¶19 Finally, we observe that the intrusion upon Mason's privacy was slight, given that first responders were already inside the home and an emergency situation was evident. The manner in which Kastenschmidt conducted his investigation was appropriately responsive. Kastenschmidt's presence was neither questioned nor objected to by anyone present at the time of the inquiry, and there is nothing to suggest that Mason's statements were coerced in any way. Thus, weighing the public's interest in effective law enforcement and emergency response against Mason's expectation of privacy, we conclude that the public interest outweighs the intrusion endured by Mason.

CONCLUSION

¶20 We conclude that Kastenschmidt was acting pursuant to a community caretaker function when he entered Mason's residence; therefore, an exception to the Fourth Amendment warrant requirement existed. Accordingly, we affirm the judgment of the circuit court.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.